SUPPLEMENTARY

TO THE

TRIAL of HURRY againſt WATSON

A

REPORT

OF THE

ARGUMENT in the COMMON PLEAS,

UPON A

MOTION FOR A NEW TRIAL,

In TRINITY TERM laſt.

IN WHICH

The Conduct of the SPECIAL JURY, in the giving of their Verdict, was agitated, and the Doctrine, reſpecting the Power of the Court to ſet aſide Verdicts for exceſſive Damages, fully diſcuſſed.

TOGETHER WITH

A Relation of the FINAL ISSUE of this long-conteſted Buſineſs.

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NORWICH:

Printed and ſold by CHASE and Co. in the Cockey-Lane. Sold alſo by R. Baldwin, and G. G. J. & J. Robinſon, Pater-noſter-row, London, and all other Bookſellers in England.

M.DCC.LXXXVII.

TR CIV

Death - 2-21-44.

In the Court of Common Pleas.

Easter Term. 27 Geo. III.

Mr. Serjeant Le Blanc——In Hurry againſt Watſon.

I Humbly move your Lordſhip for a rule to ſhow cauſe why this verdict ſhould not be ſet aſide and a new trial granted.

This was an action for a malicious proſecution. It was tried at the laſt Norfolk aſſizes, before Mr. Juſtice Aſhurſt, at Thetford, when a verdict for 3000l. was given for the plaintiff. I move for this rule upon ſeveral grounds.

1ſt. Upon the ground that in the evidence, which was admitted, the learned Judge admitted a part, which ought not to have been admitted.

2d. That in this kind of action it becomes neceſſary, in point of law, that the plaintiff ſhall prove malice and want of probable cauſe in the conduct of the defendant; that this muſt be made out by the facts appearing in evidence; that, in the preſent caſe, there were not ſufficient circumſtances, bearing upon this law, to ſupport the action of the plaintiff.

3d. The third ground upon which I ſubmit this caſe to your Lordſhip, is the immenſity of the damages. I ſtate this as a caſe, in which they are ſo flagrantly exceſſive as to beſpeak intemperance in the minds of the Jury, and are ſuch as neither the ſituation of the plaintiff in the action, nor the circumſtances of the defendant at all warrant.

My fourth ground is the improper method, in which theſe damages were eſtimated. I mean to lay before the Court, by affidavit, that the Jury, differing with reſpect to their opinion on this head, came to a determination that the Foreman ſhould permit each Juryman to put down a ſum, and, adding all together, ſhould take the medium.

Now I ſubmit to your Lordſhip that this was a very improper mode of aſcertaining the damages. Theſe are the ſeveral grounds upon which I ſubmit to your Lordſhip the propriety of your granting me a rule to ſhow cauſe.

This action, as I ſtated, was an action for a malicious proſecution, by an indictment for perjury, found at the ſeſſions, in the Borough Court of Great Yarmouth, and removed by writ of Certiorari into the Court of King's

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Bench, whence it was ſent down to be tried at the Lent Norfolk aſſizes in eighty-ſix. The ground of the indictment was, that the defendant ſwore Mr. Watſon was indebted to him in the ſum of eleven ſhillings, when, in fact and in truth, he was not indebted to him in that ſum. [Here followed a ſhort recapitulation of the origin of the matter].—The defendant was acquitted; and, at the ſummer aſſizes following, he brought his action for damages againſt his proſecutor, and was nonſuited. At the laſt Lent aſſizes for the ſame county, the cauſe went down to be tried again. Mr. Bell, the plaintiff's attorney, was called, who proved the acquittal of Mr. Hurry at Thetford, and the damages of 600l. and upwards, which he had ſuſtained by maintaining his aforeſaid action; and next, Mr. Locke proved, that Mr. Watſon brought him a written paragraph in his own hand writing, and directed him to inſert it in three different papers—the Norwich, the Bury, and the Ipſwich—importing that Mr. Hurry's cauſe had gone off from a flaw in the indictment, &c. This was brought as a proof of continued malice in Mr. Watſon. Mr. Locke did not prove this paper which was given him by Mr. Watſon: He had ſent it to one of the three printers, but he did not know which. He made a copy of it, and this copy was produced in evidence by the Norwich printer. It was objected here, that if they meant to make any charge againſt Mr. Watſon on this ground, they ought to prove that ſome endeavour had been made uſe of to produce that paper, or go further and prove a true copy; but no ſuch evidence was given: on the contrary, Mr. Locke ſaid that he could not ſay that the paragraph agreed with the original. On this ground, I ſubmit to your Lordſhip, that this paragraph was improperly admitted as evidence.

I believe, my Lord, that this was the whole of the evidence that was given, except that ſome evidence was gone into, reſpecting the Grand Jury, to throw a kind of general ſlander upon them, that one was related to one man, and one to another, that they were part of the corporation, &c. &c. to prove that this indictment was found by perſons improperly influenced.

With reſpect to the circumſtances of the defendant no evidence was given, except that it was ſaid that he was an attorney reſident in Yarmouth, and had been Mayor.

I ſubmit, therefore, to your Lordſhip, in the firſt place, that this paragraph ought not to have been admitted in evidence—and

2d. That it did appear clear that this gentleman had at firſt ſworn to a debt of eleven ſhillings as due to him, and that this was the perjury mentioned in the charge in the indictment. That it was a raſh oath, and that therefore there was not a want of probable cauſe in Mr. Watſon, when hepreferred the indictment. There is a very recent caſe, which

came

came on in this Court before your Lordſhip—the caſe of Kirby and Addington—Here the Juſtice corrected himſelf—

Lord LOUGHBOROUGH. No—His miſtake was corrected by other witneſſes. What he ſwore was certainly directly falſe, but I ſaw it was not wilful; but I did not recommend when he was acquitted a proſecution on that account.

Judge HEATH. There is the caſe of the Mayor of Derby, who deſired that a fact, that he had ſtated in his affidavit, might not ſtand; he was indicted and acquitted, and afterwards recovered upon an action for a malicious proſecution.

Mr. Serjeant LE BLANC. The next ground, viz. the damages, it would be ſufficient merely to ſtate the ſum; but in addition to this I have an affidavit from Mr. Watſon himſelf, that the damages alone, independent of the coſts, are more than he is worth in the world. I am aware that the Courts are not inclined to ſet aſide a verdict for exceſſive damages; but the Courts have always held, that they would not have it underſtood that they could not ſet aſide a verdict on theſe grounds. Now I lay it down then, that this caſe comes within the rule of the Court, and I ſhould hope, on this account, and on account of the affidavits, that the verdict will be ſet aſide. With reſpect to the conduct of the Jury in giving their verdict, I have an affidavit, as well from one of the Jury, as from two other perſons, by which it appears that the Jury put down each a ſum, then added the ſums together, and then took the medium.

Now the Court has frequently ſet aſide Verdicts that have been formed in an improper manner; as where Juries have drawn lots, toſſed up, &c. &c.

Judge WILSON. Do you know, Brother Le Blanc, any caſe where the affidavit of a Juryman has been received in evidence?

LE BLANC. I know it was refuſed lately in the Court of King's Bench.

Judge GOULD. There was the caſe of the Poliſh Jew, Symonds: There the Court received the affidavits of all the Jurors; but, however, after they had done it, there was ſomething like repentance expreſſed upon the occaſion for having received them.

Judge HEATH. The affidavits of the Jury were received in a caſe, where the coachman of a perſon was alleged to have ſaid to the Foreman, as he ſtood by the box "Now you have a good opportunity of doing a favor to our friend ſuch a one;" and that in conſequence of this, a verdict was brought in for ſixty-pounds only, when much more ought to have been given. But this was to wipe off an aſperſion from the Jury.

Mr.

Mr. Serjeant LE BLANC. I think I recollect in the books more caſes than one, where a rule was granted to ſhow cauſe, when it appeared from the affidavit of a Juryman, that the Jury had taken improper methods to form their verdict, that they had toſſed up, &c. But in addition to this affidavit of the Juryman, if any objection ſhould be taken to it, I have the affidavit of two other perſons, that they have often heard the circumſtances which I have mentioned from a Juryman himſelf.

There is a caſe in Barnes, p. 441, † the caſe of Philips and Fowler. After a motion for an arreſt of judgement, and pending the conſideration of the Court, it being diſcloſed to the defendant, by two of the Jurors, that they and their fellows, being divided in opinion, had determined their verdict by caſting lots; the defendant moved to ſet aſide the verdict, upon an affidavit of the fact made by the two Jurors, and upon hearing counſel on both ſides, the queſtion was, whether the defendant in this caſe could move to ſet aſide the verdict. And the Lord Chief Juſtice Comyns and Mr. Juſtice Dorton were of opinion, that though this motion ſeemed out of time by the general practice, yet that it being founded upon a matter diſcloſed to the defendant, and made before judgement pronounced, the Court muſt receive it, and *the fact as to the Jurors determining by chance being undiſputed*, the verdict was ſet aſide.

Lord LOUGHBOROUGH. You have ſaid enough, Brother Le Blanc, to induce the Court to call for the Judges report.

A Rule granted.

† Mr. Juſtice Fortiſcue contra—Vide Lord Fitzwalter's caſe—Salkeld 647—This caſe is not to be found in Salkeld, as mentioned in Barnes.

Trinity Term, Wedneſday, June 13, 1787.

THE Judges report being read, Mr. Serjeant ADAIR began to ſhow cauſe againſt the rule, that had been obtained, in ſubſtance, as follows.

My Lord, it becomes now my buſineſs to ſhow cauſe againſt this rule, and to anſwer the objections, which have been ſtated againſt the verdict, which were divided into four (Vide the motion for the rule).

The firſt point, my Lord, is that, which appears to be the moſt material, looking moſt like a legal ground of objection; that is, the point of evidence. The objection in this caſe was founded upon the evidence of a Mr. Locke, and upon a ſtrict adherence to what is certainly a rule of law, the admitting only the beſt evidence, that can be procured. But this rule of law, and what is the beſt evidence, has always been inferred from the nature of the caſe, and from the peculiar circumſtances of the caſe. That may be good and admiſſible evidence againſt one party, which, on the general rule of law, would not be the beſt evidence.

I conceive the evidence in queſtion to be of this nature. Mr. Locke was called. He ſtood in the ſtation of a perſon, who had been employed by Mr. Watſon. He was ſo employed, and the object for which he was employed was, at the authority of Mr. Watſon, to inſert a particular paragraph in the public news-papers; and, in order to aſcertain what the import of that paragraph or advertiſement ſhould be, Mr. Watſon furniſhed him with a draft, with orders to inſert it in three different papers. Now the direction of ſending it to more papers than one, conveyed with it an authority to Mr. Locke to write over as many more as were neceſſary. I contend in this caſe, that between theſe parties, and for the purpoſe for which this advertiſement was intended, every one of thoſe drafts for this advertiſement was in truth an original. They were copies of a paper for the uſe of a third perſon. Mr. Locke acted under the authority of Mr. Watſon; he was his agent; and conſequently his act was the act of Mr. Watſon.

Mr. Locke ſwears poſitively that he fulfilled his agency. Indeed the ſubſtance of the advertiſement was all that was material. And the imagination of man could not have conveyed Mr. Watſon's intentions more fully than Mr. Locke's copy, which were, to impreſs the public with the idea that Mr. Hurry was not acquitted upon merits, but upon a defect in the indictment. Could it have weighed a feather, either in the action, or in the advancement of the damages, whether an *or*, or an *and* had been

omitted in the wording of the advertiſement? Certainly it could not. Now then, my Lord, as plaintiffs in this cauſe, we could but go to ſome one of the printers, and procure the original, whence he printed the advertiſement. It was all we could do. It appeared that all the printers had received their advertiſements from Mr. Locke. The only way then, to bring the matter home to Mr. Watſon, was to call upon one of the printers for his authority. The plaintiff could not have an idea of here being any poſſible difference, till Mr. Locke had been examined. He ſaw that all the advertiſements were of the ſame import in the three papers. He may then truly be ſaid to have uſed all due diligence in procuring the beſt evidence, in having done what he did, in procuring one of the copies, which Mr. Locke gave to the printer. Suppoſing that, in fact, that copy had not been a literal copy of the draft, which Mr. Watſon gave to Mr. Locke, ſtill, if it had in effect been the ſame, it would have been enough. Mr. Watſon's intention was equally well fulfilled. In the ſtricteſt rule of evidence, then, I contend, this was as good evidence as could be produced. But allowing for a moment—but not admitting in fact—allowing, that this paper, which was produced, was but a copy—a copy taken by the party himſelf will not ſtand in the ſame ſtate as one taken by another. Suppoſe a copy of an account, for inſtance, in the office of a merchant, taken out by his clerk, under the merchants direction, your Lordſhip would not ſuffer him to avail himſelf of a final *e*, or the omiſſion of an apoſtrophe, —or becauſe the word honor was ſpelt without a *u*—Your Lordſhip would not permit this. I therefore contend, upon the preſent occaſion, 1ſt. That all the copies in this caſe were, in fact, originals; and 2d. That if they were copies, there is ſufficient evidence, as *againſt Mr. Watſon*, that the one produced was a true copy. Mr. Locke ſwears that he verily believes it to be ſuch. He ought not to have ſworn more. I am ſure I would not, in any caſe, ſwear more than that I believed ſuch a copy was a literal copy. For your Lordſhip knows, that in copies even of indictments, where the utmoſt exactneſs is required, examined by perſons who drew them, by counſel afterwards, variation even of words will ſometimes be diſcovered by another perſon at the moment. From the very nature then of the thing itſelf, no other evidence is poſſible, than what Mr. Locke gave, that he verily believes it to be the true copy. I contend then upon this ground, and upon the ground of the relation of the evidence to the parties, that this was the beſt evidence upon this occaſion, that could be produced.

It ſeems then to me, that now but little remains to trouble the Court with; for if this is evidence—if it is true that Mr. Watſon authorized the inſertion of theſe advertiſements in the paper, I am at a loſs to put the

2d.

2d. objection—That there is not expreſs malice in his conduct towards the plantiff, and that there was probable cauſe for it. The facts in this caſe are extremely few, but they are ſtrong leading facts; they are marked features in the cauſe; if ever there were a few facts that ſhowed expreſs malice, and proved that there was not the leaſt ſhadow of probable cauſe, we ſhall find them in this caſe. I will drop thoſe which are mere fringes of the cauſe; ſuch as the Court where this indictment was preferred; the Grand Jury packed, as I may truly ſay, for the purpoſe of finding the bill; theſe, and ſuch like, as merely (comparatively ſpeaking) trifling circumſtances. I ſhall lay my finger on this fact—that Mr. Watſon knew what Mr. Hurry had ſworn, and indicted him in the firſt inſtance for what he knew he had not ſworn—for reſtraining, reſtricting, and giving a different meaning to Mr. Hurry's oath, is to all intents and purpoſes indicting him for ſwearing what he did not ſwear. It is impoſſible any one can be ignorant why the aſſignment of the perjury was what it was; it was to bring the action. Had Mr. Hurry's oath been ſtated, the perjury could not poſſibly have been aſſigned. Mr. Watſon then, clearly, with the fulleſt knowledge of what Mr. Hurry had ſworn, for the ſole purpoſe of ſubjecting him to the diſgrace of an indictment for perjury, perverted juſtice, and abuſed the law, and, by the groſſeſt artifice, ſupported the charge againſt him. This, my Lord, was the conduct of Mr. Watſon in the firſt inſtance. But this was not all. Afterwards, when the event of the trial of Mr. Hurry was known to him, when he knew Mr. Hurry was acquitted, inſtead of learning what he ought to have learned; inſtead of feeling what he ought to have felt, that he had groſſly injured Mr. Hurry; inſtead of ſhowing an inclination to make a recompence to Mr. Hurry, whoſe character had never before been blown upon by the breath of ſlander; inſtead of doing all this, he proceeds, with all this knowledge in his mind, to plant a new dagger in the breaſt of Mr. Hurry, by the inſertion of the infamous advertiſement in the public news papers, through the means of Mr. Locke. It is therefore highly neceſſary, indeed, for Mr. Watſon's counſel to labour the excluſion of this advertiſement from the caſe, which proves in a manner not to be controverted, that Mr. Watſon was provoked becauſe Mr. Hurry had eſcaped his machinations by law, and that therefore he was determined to wound him by another channel. The Court cannot heſitate a moment upon theſe facts, they are ſtrong and leading facts; they prove malice beyond controverſy, and ſhow want of probable cauſe, without a poſſibility of doubt. I would aſk—Could Mr. Watſon be ignorant of what Mr. Hurry ſwore when he framed the indictment? Can there be a doubt of his malice when he preferred it? Does it not glare upon one when he cauſes the advertiſement to be inſerted?

I will not trouble the Court with going into the minutiæ. Theſe two facts, which I have mentioned, are in themſelves ſuch proofs of malice, ſo plain, ſo clear, upon the very face of them, that the Jury, upon this occaſion, were not in the ſituation of many other Juries, obliged to collect their opinion from a variety of facts, ſome of which are capable of being tortured by ingenuity into different and doubtful meanings; theſe facts are not capable of perverſion; they ſpeak one uniform language to every perſon's underſtanding.

Why need I trouble the Court on the 3d. head? The extreme reluctance which the Court always feel where a verdict is given by a reſpectable Special Jury, and before one of his Majeſty's Judges, render it unneceſſary for me to take up your Lordſhip's time on this point. And if ever there was a caſe, where it was peculiarly the province of a Jury, according to their own feelings upon the ſubject, to determine, it was that now before the Court. There can be no caſe imagined, in which the degree of injury in the perſon injured, and the degree of malignity in the perſon injuring, can be carried to greater heights than in this. The total ruin and perdition of any individual may be intended, and may be executed; his character may be blaſted; all his proſpects be cut off; his health, in conſequence of grief and vexation, deſtroyed; in ſhort, there is no evil that may not with juſtice be imagined as producible by a *malicious proſecution*. This caſe, then, now before the Court, is a matter which it was peculiarly the province of a Jury to decide upon; of a Jury of the county, where the conduct of both the parties were under their conſideration; of a Jury, compoſed of gentlemen, who were acquainted with both the parties, who knew the character and circumſtances of both the parties. I therefore humbly conceive, that this Court on this third ground, upon which a motion for a new trial has been founded, cannot attend to the application. As to the fourth and laſt ground of this application, the ſuppoſed improper mode of eſtimating the damages, that, I ſhould think, comes before the Court (viz. upon the affidavit of one of the Jurymen) in a way which the Court will hardly judge admiſſible.

One reaſon among many others, for not receiving ſuch evidence as this, is that it is liable to the greateſt degree of fallacy, in the preſent caſe. The Jury are ſaid each to have put down a ſeparate ſum, and then caſting them up all together, to have taken the medium or average. But, ſuppoſing this to have been the way, to know its effect, the affidavit ſhould have ſtated what was the loweſt ſum, that was put down by any individual. I know not indeed expreſſly that the affidavit has not done this, but I conceive, for very good reaſons, that it has not. But ſuppoſing the fact—

Lord

Lord LOUGHBOROUGH. If that was the mode of eſtimating the damages, the verdict ought not to ſtand.

Counſel for Defendant. We have an affidavit of one of the Jurors that this was the caſe, and of two other perſons, who heard the Jurymen declare that the Jury did take this mode.

Serjeant ADAIR. Neither the one nor the other of theſe can be admitted.

The Court. If the affidavit of the Jurors cannot be received, the other affidavits muſt be conſidered as inadmiſſible likewiſe.

Lord LOUGHBOROUGH. There are many caſes where the improper mode of aſcertaining the verdict has been taken cognizance of by the Court.

Judge GOULD. The Court may examine the Jury as to the mode of eſtimating damages, if they hear of it at the time.

Judge HEATH. How long were the Jury in finding their verdict?—*Anſ.*—An hour.—It appears then that they muſt have conſidered upon the matter.

Judge WILSON. Suppoſe all the ſums were put down, as has been ſtated, and the Jury had then looked upon them, and then formed their determination?

Serjeant BOND. There is the caſe of Lawrence and Boſwel, in Serjeant Bayer's Reports, p. 100. There is likewiſe the caſe of Vaſie and Delaval, Term Report, Michael. 26th of the preſent reign. This was a motion for a new trial upon the affidavit of two Jurors, who ſwore that the Jury, being divided in their opinions, toſſed up, and the plaintiff's friends won. My Lord Mansfield ſaid the Court could not receive ſuch an affidavit from any of the Jurymen themſelves, in all of whom ſuch conduct is a very high miſdemeanour; but in every ſuch caſe, the Court muſt derive their knowledge from ſome other ſource; ſuch as from ſome perſon having ſeen the the tranſaction through a window, or by ſome ſuch other means.

There is the caſe of Quart againſt Santel. This was an action tried at Exeter. Mr. Gibbs moved to ſet aſide the verdict—as, on the bailiff's being called in, one of the Jurymen took up an half-penny, and ſaid, we have won.

Mr. Serjeant ADAIR. I ſhould like to ſee, my Lord, what this affidavit of the Juryman does ſtate, if my Brother would favour me ſo far. Mr. Serjeant Bolton then read the affidavit of one Zachariah Death, of Diſs, the purport of which was, that the Jury did all agree to put down each their ſeparate ſums, and that having done ſo, and ſomething being mentioned reſpecting Mr. Watſon's circumſtances, they fixed upon 3000l.

Lord LOUGHBOROUGH. In the preſent caſe, admitting the mode, which the Jury took to eſtimate the damages, to be an idle one, yet the 3000l. does appear to have been agreed to then by them all. The caſe of King againſt Symonds, 1ſt Wilſon, 329, I remember was this—Symonds was indicted for ſtealing a certain number of dollars; the Jury found a verdict—Guilty of taking away the dollars, but not with a felonious intention. The clerk of aſſize entered the verdict Guilty. Upon this the oaths of all the Jury were admitted, in order to aſcertain their real verdict.

Judge HEATH. I am glad, in the preſent caſe, the affidavits are not admiſſible, on account of the precedent.

Mr. Serjeant BOND. My Brother Adair has gone ſo fully into the queſtion now before the Court, that there is but little occaſion for me to enter much on the ſubject. As to the firſt point, it ſeems to me that it was ſtrictly—

The Court. We have no doubts on that head.

Then as to the ſecond point—The malice—It was as groſs an inſtance as ever came before a Jury.

The Court. You need not labour that matter.

With reſpect then to the third—Will your Lordſhip ſay that 3000l. were too great damages, for being ſubjected to trial for a crime of the groſs nature of perjury; a crime that can ſcarcely be done away; a crime, which ſuppoſes a man totally devoid of every grain of moral honour or honeſty! Were it my caſe, I am ſure, I ſhould expect a much greater ſum. Your Lordſhip will recollect the caſe of Sir Alexander Leith, and Pope, the uſurer; there the damages were 10,000l. and the crime, for which Sir Alexander was tried, was of that nature, which, as ſoon as he was acquitted of it, left no ſtain on his character.

Lord LOUGHBOROUGH. There is given in evidence upon the proſecution very heavy expences. This I diſlike very much. It is probable that the Jury, in eſtimating their damages, ſtarted from the 600l. which was proved upon the trial to have been laid out by the preſent plaintiff.

Serjeant BOND. My Lord, Mr. Hurry had been all this money out of pocket. There is not, I allow, the leaſt analogy between a Jury's aſſeſſing damages, and the Prothonotary taxing coſts. But when I go to a Jury, I have a right to ſtate to that Jury what damages I have ſuſtained in procuring counſel to protect me, and in taking every neceſſary ſtep, to which a regard to myſelf and my family ought to urge me for this purpoſe. In juſtice, and in equity, and in conſcience, a Jury ought, in ſuch caſe, to grant a man his charges. If the Jury had ſaid that theſe charges had been incurred in order to harraſs the mind, and deſtroy the peace of another,

ther, ſome objection might have been taken to them; but this was not the caſe; nay, it does not appear that the Jury ever took thoſe charges into conſideration at all. If the Counſel for the defendant thought that the expence of 300l. for fees ought not to have been brought in evidence, they ought at the trial to have ſtated their objections, and the Jury would have been inſtructed by my Lord to have laid all that out of the queſtion. What evidence is there, that this 600l. was a ſet off? Certain it is that Mr. Hurry was intitled to a compenſation for his expences, and for his feelings. Certain it is that he had a right to his action upon the caſe for his damages incurred by this malicious proſecution, whether the aggravation of a conſpiracy or confederacy were wanting, and the injury came from one only or no; for if this were not ſo, the legiſlature would, in inſtances of this ſort, give damages upon indictments. As for the queſtion of the damages—Upon the whole they do not appear to me to be exceſſive. I will venture to ſay there is no gentleman who will lay his hand upon his heart, and declare, that he ſhould not mind undergoing all, that Mr. Hurry has undergone, for a ſimilar compenſation. I ſhould hope, therefore, that your Lordſhips will not heſitate to confirm the verdict.

Mr. Serjeant LAWRENCE. My Lord, what is left for me to ſay upon the ſubject is reduced to a very narrow compaſs; namely, to the enquiry —whether or no the damages are exceſſive, in the preſent caſe, and whether on this ground the Court can ſet aſide the verdict.

With reſpect then to the enormous ſum, whence it has been ſuppoſed the Jury ſtarted on the eſtimation of their damages, it ought to have been obſerved upon by the counſel at the trial; not being ſo, it was admitted by the defendant as fitting and proper. I allow 300l. is a large ſum to be given to counſel; but, my Lord, my client was indicted for perjury; a crime, the conſequences of which are ſhocking: It was incumbent upon him, therefore, to uſe his beſt exertion to prevent the horrid charge from being brought home to him. I ſhould conceive that Mr. Hurry, when all the leading counſel on the circuit were employed againſt him, can hardly be deemed profuſe in endeavouring, at any price, to procure the beſt counſel poſſible. Mr. Hurry's caſe ſeems to me to be one of thoſe, about which a man might be juſtified in laying out his money more than any other. I do not ſee, therefore, how the Court can think this ſum of 300l. was money idly ſquandered away, or how it can be conſidered as any ground of objection to the quantum of the damages. I now beg your Lordſhip's attention to a few caſes tending to ſhow, that in queſtions of Tort, the Jury, and the Jury only, are to determine.

There is a caſe ſo long ago as Hil. 28 and 29 Cha. II. in Moderna, p. 150.

150. This was an action for words ſpoken by the defendant, that the plaintiff was an unworthy man, and acted againſt law and reaſon. The Jury gave a verdict, 4000l. damages. A motion was made for a new trial, upon *three* grounds, but the principal was, that the damages were exceſſive. Chief Juſtice North ſaid that, as a Judge, he could not tell what value to ſet upon the honour of the plaintiff; the Jury have given 4000l. and therefore he could neither leſſen the ſum, nor grant a new trial, eſpecially ſince, by the law, the Jury are the Judges of the damages. Now, my Lords, if in thoſe days 4000l. was not conſidered as too much for ſuch an offence as the one, that has been ſtated, can the Court think that 3000l for indicting a man for perjury, now, when money is of ſo much leſs value, ought to be looked upon as exceſſive damages?

Lord LOUGHBOROUGH. The date of your caſe is againſt you. Lord North's time was a time of high political ferment.

Mr. Serjeant LAWRENCE. There is the caſe of Beardmore againſt the King's Meſſengers, 2d. Wilſon, 244. This was an action for falſe impriſonment, the damages found by the Jury were 1000l. A motion was made for a new trial, upon the ground of the exceſſiveneſs of the damages. It was refuſed by the Court, Lord Camden preſiding, who obſerved, that they deſired it to be underſtood, that that Court does not ſay, or lay down any rule, that there never can happen a caſe of ſuch exceſſive damages in Tort, where the Court may not grant a new trial; but in that caſe the damages muſt be monſtrous and enormous indeed, and ſuch as all mankind muſt be ready to exclaim againſt at firſt bluſh.

Lord LOUGHBOROUGH. My Lord Townſhend's caſe would ſtand ill by that rule.

Mr. Serjeant LAWRENCE. My Lord, I wiſh my client's caſe to ſtand by this rule. There is the caſe of Huckle againſt Money, 2d. Wilſon, 205. This is an action for falſe impriſonment, for ſix hours, by the King's Meſſenger, upon ſuſpicion of printing the North Briton, number 45, and uſing him very civilly, by treating him with beef ſteaks and beer; the damages were 300l. A motion was made for a new trial; it was refuſed by the Court. The Lord Chief Juſtice obſerved, that the few caſes to be found in the books of new trials for Torts ſhow, that Courts of Juſtice have moſt commonly ſet their faces againſt them, and the Court interfering in theſe caſes, would be laying aſide Juries. It is very dangerous for the Judges to interfere in damages for Torts; it muſt be a glaring caſe indeed of outrageous damages in a Tort, and which all mankind at firſt bluſh muſt think ſo, to induce a Court to grant a new trial for exceſſive damages. My Lords, I have cited theſe caſes with reſpect to the amount

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of the damages. With reſpect to Mr. Watſon's circumſtances, he gave no proof of his inability, and if he had, the Courts have ever conſidered it as of no weight. In the famous caſe of my Lord Groſvenor and the Duke of Cumberland, my Lord Mansfield obſerved, that the rank and ſituation of the defendant ought not to be taken into conſideration: that the Peer and the peaſant ought, in the eye of the law, to be looked upon as on a level. There is the caſe of Wilford and Berkley, 1ſt. Burrows, 609. A motion was made for a new trial, on the ground of exceſſive damages. It was an action for crim. con. The defendant was a clerk of the Exchequer, during pleaſure, at 50l. a year: the verdict was 500l. The Court were all clear and unanimous, that although there was no doubt of the power of the Court to exerciſe a proper diſcretion in ſetting verdicts aſide for exceſſiveneſs of damages, in caſes, where the quantum of damage really ſuffered by the plaintiff could be apparent, or they were of ſuch a nature that the Court could properly judge of the degree of the injury, and could ſee manifeſtly, that the Jury had been outrageous in giving ſuch damages as greatly exceeded the injury; yet the caſe was very different, where it depended upon circumſtances, which were properly and ſolely under the cognizance of the Jury, and were fit to be ſubmitted to *their* deciſion and eſtimate. There is the caſe likewiſe of Goddart and Grey, in the Court of King's Bench.

Upon the authority of theſe caſes, I conceive, that the Court ought not to lay any ſtreſs on the ground of the damages, in this caſe, being exceſſive, or be thereby in the leaſt induced to ſet aſide the verdict.

Mr. Serjeant ADAIR. I remember a caſe in this Court. An action of aſſault was brought, by a ſhip's butcher, againſt the Captain; the Jury gave 400l. damages. The aſſault proved was only, that the Captain had beaten the man with a rattan, having found him on ſhore without leave. I made a motion for a new trial, on the ground of the exceſſiveneſs of the damages; but the Court would not hear me.

Serjeant BOLTON. Your Lordſhips will indulge me with a few words in ſupport of this rule. I truſt it has appeared to this Court, that there never was a caſe, in which the cool interpoſition of the Court was more neceſſary. It is neceſſary, in order to allay that fever, if we cannot cure it, which ſeems to have reigned againſt the defendant, Mr. Watſon, for a long time throughout the whole county of Norfolk. There is no doubt the whole of this buſineſs was owing to an election—this Mr. Watſon being at the head of the Corporation, and this Mr. Hurry at the head of the Preſbyterian Party.

Your Lordſhip is perfectly apprized from what a contemptible ſource this contention at firſt aroſe. The original demand was but for eleven ſhillings. This Mr. Hurry, who is repreſented by the Counſel on the other ſide as totally pure, as quite free from malice, and as a character that carries about with him nothing but his injuries; this gentleman came into the Court of Conſcience, to lodge a complaint againſt the Mayor Elect of the Corporation of Yarmouth, for the ſum of eleven ſhillings. My Lord, this ſum, thus complained of by this gentleman, was not due; all the ſum that was due was 6s. 10d. This ſum was not due from Mr. Watſon; 3s. 5d. of the money had actually been paid over by Mr. Watſon to the perſons, who took up the ropes and anchor, and the other 3s. 5d. had been tendered over and over again to Mr. Hurry. Nothing was due to Mr. Hurry. If there had been any real ground of a claim at all, it was the owner, or Captain of the ſhip, who was intitled to make it. Mr. Hurry, therefore, ſwore to three things, that were not true. He ſwore to a debt as due to himſelf, which was in fact due to another—to a larger debt than there were grounds to inſiſt upon—and to a debt, as owing from Mr. Watſon, which, in reality, if it was owing at all, was owing from quite another quarter. There certainly then, was probable cauſe for Mr. Watſon to prefer his bill of indictment. But, in order to bolſter up this caſe, the other ſide pretend to have proved expreſs malice, from a paragraph in the news-papers inſerted by Mr. Watſon.—I muſt beg your Lordſhips to attend to the date of that paragraph; you will find it was ſubſequent, long ſubſequent to the finding of the bill of indictment: Indeed this paragraph was not inſerted till after the trial at Thetford—till after Mr. Watſon had been goaded, and provoked, by numberleſs paragraphs inſerted in different Chronicles, to the diſadvantage of him and his party, by the friends of Mr. Hurry. Mr. Hurry, my Lord, ſeems to have acted in this caſe, like the man, who having done every thing in his power to put another into a paſſion, and having ſucceeded, then complains that the man is in a paſſion. Your Lordſhip, then, will ſee no expreſs malice has been proved by the plaintiff againſt the defendant, and that there was a probable cauſe for the conduct of the defendant.

Having dwelt thus long on this point, I ſhall now proceed to the exceſſive damages. Theſe, my Lord, ſeem to me ſuch as to ſtare one in the face; it is a ſum which defeats itſelf; it cannot be paid; the defendant has made an affidavit, that it is much more than he is worth in the world. Your Lordſhip would do the defendant more injury, and the plaintiff more good, by eſtabliſhing a leſs verdict. For the ground of thoſe enormous damages, the plaintiff gave in a ſum, called expences, of 620l. in this, 300l.

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was paid for counſel's fees. This ought not to have been done; it was indecent to bring this before the Jury; legal coſts and expences are allowed by the proper officer. Now, no officer would have allowed more than five or ten guineas, at moſt, upon this occaſion. The Jury undoubtedly ſtarted from this ſum, and it is highly probable took into their account likewiſe the ſuppoſed expences of the laſt trial, the greateſt part of which was incurred, in order to bring down Mr. Erſkine to make a ſpeech, and Mr. Mingay to examine the witneſſes; for there was nothing in this buſineſs, which was not over in half an hour, and which might not have been as well done without thoſe gentlemen as with them. The matter had been very ably conducted, the aſſizes before, by Mr. Murphy; and there were gentlemen upon the circuit, as able and as ſufficient for managing this, or any other cauſe, as go on any circuit whatſoever.

Lord LOUGHBOROUGH. If Mr. Wilſon was unengaged, I am ſure there was no occaſion to ſend for any other counſel.

Mr. Serjeant BOLTON. My Lord, there was no colour of pretence to ſend for thoſe gentlemen, nor to purchaſe their aſſiſtance at a ſum ſo enormous. I will admit, indeed, that Mr. Erſkine earned his fee; for, upon this occaſion, he out-Heroded Herod. The effect of Mr. Erſkine's ſpeech was ſuch, as to make the Court and Jury madder than a ſever. I underſtand, my Lord, that this Mr. Hurry came to Thetford, more like a conqueror than any thing elſe; he had all the ladies with him, and all the gentlemen of his acquaintance and neighbourhood: the day of the trial was *a perfect Jubilee of the Hurrys*. And, My Lord, Mr. Erſkine talked of good name in man and woman, with ſo ſweet an accent and in ſuch moving phraſes, that all the men were in tears, and all the women abſolutely blubbered. He introduced the old ſtory of his friend Admiral Keppel and Sir Hugh Palliſer, and actually declared that the former fell a martyr to the effects of the latter's proſecution of him. He likewiſe drew a cruel and affecting picture of Mr. Mingay's ſiſters—who rejoicing at ſeeing their brother come down in the elegant manner he did, he imagined all of a ſudden to be, like Niobes, all tears, from the idea that their brother was accuſed of ſtealing a pocket handkerchief, and that of courſe he was likely to be indicted for a capital offence.

My Lord, by theſe, and ſuch pictures and pathetic deſcriptions, he ſtole into the pockets of the Jury—And my Brother ADAIR is deſirous of lending a helping hand, to enable Mr. Hurry to ſecure the money, which Mr. Erſkine has thus ſtolen for him; for he has talked a good deal about the reſpectability of the Jury, and the deference that of courſe ought to be paid them. I would wiſh to know, my Lord, if I am precluded from going

going into the behaviour of the Jury. I would always ſpeak with reverence of what falls from that great authority, which has been quoted in the caſe of Vaſie and Delaval; but I really cannot ſee any thing in that doctrine, that a Juryman ſhall not be heard to tell his own fault. Why ſhall he not? A culprit, to convict himſelf, has his own confeſſion taken againſt him. Your Lordſhip has ſaid, that if it was a fact, that the damages were eſtimated in the manner ſaid, that the verdict ought not to ſtand. Indeed, by this manner of proceeding, the very principle of a Jury is perverted. You have no one opinion thereby inſtead of twelve; that is one objection. The next is, that any one man may raiſe the damages to any height he pleaſes, and the laſt the moſt. And, my Lord, there can, in this caſe, be no doubt of the fact; we have the affidavit of one of the Jury, and we have the affidavit of two other perſons beſides, who heard one of the Jurors aſſert, that each Juryman put down a particular ſum, and that then they took the medium, or average. But if your Lordſhips think that theſe affidavits are not admiſſible, I muſt not go upon it. Certain it is, that the fact was as I have ſtated; and certain it is, that had this reſpectable Special Jury, whoſe credit my brother Adair has ſo much trumpetted, lived in a more early period, they would, for their conduct, have experienced a ſevere puniſhment. The law of Attaints would have reached them; their houſes would have been razed; their property would have been confiſcated, and every one of them, with Sir Martin Folkes at their head, would for ever have been incapable of ſitting on a Jury again.

I did not expect upon this argument to hear, that the Court has not authority to mitigate damages. I am ſurprized to hear, after what had ſo lately happened, in the caſe of Elliot and Munro, that in matters of Tort this Court has no power to interfere. There is the caſe of Clarke and Udal—2d Salkeld, 649, and the caſe of Chambre and Robinſon, 1ſt Shane, 691. *

And

* Note, with regard to Chambre and Robinſon, which ſeems to be the only caſe where a new trial was granted merely for the exceſſiveneſs of the damages——the Court, in the caſe of Beardmore, &c. obſerved—That they were not ſatisfied with the reaſon given in that caſe, and think it of no weight, and want to know the fact, upon which the Court could pronounce the damages to be exceſſive. The principle on which it was granted, mentioned in Strange, was to give the defendant a chance of another Jury, which is a very bad reaſon; for if it was not, it would be a reaſon for a 3d and 4th, and would be digging up the conſtitution by the roots, and therefore we are free to ſay, this caſe is not law, and there is not one ſingle caſe (that is law) in all the books, to be found, where the Court has granted a new trial for exceſſive damages, in actions of Tort.

And is not this caſe now before the Court, excluſive of the 300l. counſel's fees, an inſtance of enormous exceſs in damages.—Did the plaintiff bring one witneſs to prove, that any one man upon earth thought him injured? Was he not raiſed by his proſecution, and is he not now the very idol of the county? What then was the object of this Mr. Hurry, in bringing the laſt action? Not to clear, as he pretends, his own character, but to aſperſe and blacken that of Mr. Watſon. So far from appearing at Thetford, like an injured man, the day, he appeared there, was a feaſt, a feſtival, and Mr. Watſon was the ſacrifice. I hope and truſt, therefore, your Lordſhips will ſet aſide the verdict, and ſend the matter to be conſidered by another Jury.

Mr. Serjeant Rook. I am of the ſame ſide with my brother Bolton, and I contend, that this verdict ought to be ſet aſide, on the ground of the exceſſive damages, and on the ground of the improper evidence, which was admitted. The rule of law is, that the beſt evidence poſſible to be procured, ſhall be procured. This was not the caſe here. They ſhould have produced the original of Mr. Watſon's—whereas Mr. Locke, who was called, produced only a copy, and that a copy too, which he would not ſwear to be an exact copy; they did not prove that all the advertiſements of the papers were the ſame. There is no neceſſary implication in the direction, which Mr Locke is ſaid to have received, to inſert the paragraph in more papers than one, that he had authority to multiply the copies; for he might have carried the original to the ſeveral printers. Certain it is, however, he was not authorized to make an incorrect copy. So much as to the point of this paper in evidence.

The next great point is the exceſs of the damages. The Court, in judging of theſe, will take a variety of circumſtances into the account. There was a deſign in the plaintiff to harraſs the defendant, by arreſting him, and ſummoning him to the Court of Requeſts for a debt of 11s.—the ground, therefore, of this complaint came from Mr. Hurry. The Court will conſider, in eſtimating the damages, what is the ſufferance ſuſtained, and how far the defendant can make ſatisfaction. My Lord, Mr. Hurry came to the trial, as my Brother Bolton has deſcribed him, like a conqueror. He ſuffered nothing at all in the buſineſs. But how then came theſe damages to be found by the Jury? A Jury, my Lord, how reſpectable ſoever they may be, are but men; and men of the beſt characters are open to impreſſions; are liable to have their paſſions heated, by a flummery ſpeech from the counſel: And there cannot be a doubt, but that theſe damages are owing more to the ſpeech of Mr. Erſkine than to

any thing, that Mr. Hurry actually ſuffered. He is certainly a man of character, and his being ſuch, was probably the reaſon why the Jury liſtened to the inflammatory harangues of Mr. Erskine. But there is another ground, on which we may account for their conduct in this caſe. They heard of the enormous expences of the former trial, and of the nonſuit. Now this was evidence, which ought not to have been received; for to have expences brought forward in a Court of law, which a Court of law would not allow, was certainly very improper. They ought not to have had ſuch evidence laid before them. With reſpect to the power of the Court, to grant a new trial, on the ground of exceſſive damages; that ſeems to be ſettled beyond controverſy, by the numerous caſes which have been decided; though, undoubtedly, they will ever feel tender in uſing the power. As to the cauſes which have been produced on the other ſide; the Court will, I am ſure, not fall into the doctrine there laid down.—The inſtance, in 2d Moderna, of my Lord Townſhend, where 4000l. damages were given, the Court will recollect, that that was at a time when parties ran high.

The caſe, cited from Wilſon, was a caſe that happened in the time of General Warrants, and whoever attends to what was ſaid upon that occaſion, will find that it originated from the abhorrence which, at that time, was prevalent in the kingdom againſt that arbitrary mode of proceeding.

My Lord Mansfield has been quoted, as ſaying, that the circumſtances of the defendant ought not to be conſidered by the Jury, in the caſe of the Duke of Cumberland and my Lord Groſvenor; but, in that caſe, his Lordſhip made this obſervation, in order to prevent the Jury from giving a verdict beyond what the value of the caſe demanded, on account of the rank and ſituation of the Prince defendant.

In the caſe of Sir Alexander Leith, and Pope, the Court indeed held, that 10,000l. damages were not too much;—but it is to be noted here, that the Court did not go merely upon the degree of the injury ſuſtained by Sir Alexander, but upon the circumſtances of Pope. In the report of the caſe by Mr. Juſtice Blackſtone, it appeared in evidence that the defendant was exceedingly wealthy, and well able to ſuſtain ſuch a verdict: In poſſeſſion, upon record, of ſeventy ſeven judgments, to the amount of more than 100,000l.—and in actual receipt of more than 3000l. per annum annuities, from young gentlemen's lives.

If then the Court will take into conſideration the circumſtances of the defendant, clear I am, that the circumſtances of my client make it manifeſt,

feſt, that the verdict ſhould be reconſidered. We have an affidavit, that he is totally unable to ſuſtain the verdict, and there is no affidavit to the contrary. It is then for the Court to determine, whether they will actually ruin this man or not, by the confirming of a verdict, which defeats the very object of the plaintiff, for it is impoſſible for him to get the money; ſhould the judgment be entered up, my client muſt be impriſoned for life; for neither the Lords act, nor the inſolvent act, extends to this ſum of 3000l. In other caſes, the Court have conſidered the damages as to the circumſtances of the parties, as well as to the nature of the offence. I ſubmit it then to your Lordſhips, that the preſent caſe, conſidered in a ſimilar manner, call upon the Court to ſend it to be reheard before another Jury of the country.

Mr. Serjeant LE BLANC, on the ſame ſide, followed Serjeant Rook, with declaring, that he did not find it incumbent upon him to enter into the motives, which induced the Jury to give the damages which they did; that from the knowledge which he had of them, from his frequent reſidence in the county, he had not a doubt, that theſe Gentlemen acted conſcientiouſly in the buſineſs, and that they were men of honour; that it was ſufficient for him to enquire, whether they have given the verdict rightly upon improper grounds, by having attended more to what was ſaid, than to what was proved: that this was what the moſt upright man in the world might have done; and that this was all he wiſhed to impute to them upon this occaſion: that their Lordſhips knew it was with a Jury, as it was ſometimes with a Judge, that both were liable to miſtakes; that both, in their concluſion in particular caſes, might be wrong. He then entered into the argument againſt the admiſſion of Mr. Locke's evidence; and into the proof of Mr. Watſon's having probable cauſe for his preferring the bill of indictment. With reſpect to the power of the Court, to ſet aſide verdicts for exceſſive damages, he forbore to trouble their Lordſhips with a long ſtring of caſes, which were to be found from the time of Stiles, p. 466. in the year 1655, in the caſe of Wood and Gunſton, to the 26th of the preſent King, in the inſtance of Ducker and Wood; he remarked in the caſe of Benſon and Sir Thomas Frederick, 3d Burrows, 1846. Lord Mansfield ſaid, he had no doubt but it might be right to give an opportunity of reconſidering verdicts, when exceſſive damages had been given; and that his Lordſhip ſeemed to make this obſervation, on purpoſe to guard againſt the idea's prevailing, that the Court had not the power, he was then contending for; and that in the caſe in Trinity Term, 1785, in Term Reports, the ſame doctrine is laid down as in Stiles's Reports, Mich.

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Term, 1655. He then adverted to the exceſſiveneſs of the damages; that they were more than the circumſtances of the defendant enabled him to pay; that the defendant was, as he always had been, willing, upon oath, to deliver up his *All* to Mr. Hurry; to make him every compenſation in his power, to the utmoſt of his abilities and of his credit; and to add to it any apology, the Court ſhould think proper to preſcribe.

Lord LOUGHBOROUGH.

I am of opinion, that the plaintiff in this action was intitled upon the evidence, to ſubſtantial and very conſiderable damages. There was no objection to the admiſſion of Mr. Locke's evidence. I do not think it was neceſſary to prove the contents of the given paper. It was enough to prove, that the paragraph had been inſerted by the direction of the defendant. Now Mr. Locke's evidence was, that he received a paragraph to be inſerted in three papers; and that he ſent to the papers a writing, containing, to the beſt of his judgment and belief, a copy of this paragraph. This, I think, would have been ſufficient evidence to bring the matter home to Mr. Watſon. I think, upon the circumſtances of the caſe, it plainly appears, that the indictment was malicious, and without probable cauſe. That there were no grounds on which Mr. Watſon ought to have founded the proſecution of Mr. Hurry for perjury, from the oath which he took; and that the Jury were well warranted in giving him a verdict of damages.

We come then to the exceſſiveneſs of theſe damages. Theſe ought to have been conſiderable; and to have been given in ſuch a manner, as not to be liable to objection. If they are exceſſive, the enquiry is open to another Jury; becauſe from the circumſtances of the exceſs, it is to be inferred, that the verdict was given in the hurry of a Niſi Prius; the Court does not arrogate hereby to itſelf the right of aſſeſſing damages, nor does it affect the credit of a Jury. The Court does nothing more, than direct a cooler enquiry ſhould be made. I have no doubt that the Court has a power to grant a new trial, in the inſtance of exceſſive damages; from the caſes, which have been cited from Stiles, in the year 1655, down to the caſe in the 26th year of his preſent Majeſty, there can be no doubt, that the Court muſt form a judgement, whether the damages are exceſſive or not. We did it the other day on a writ of enquiry. In that caſe, it was pretty obvious what the idea of the Court was—that they conſidered the damages aſſeſſed as too much, ſo as to deſire that the matter might

might be reheard; and what the Court has done in one inſtance, it may in another. It is very difficult, in a caſe like the preſent, to eſtimate damages, becauſe it muſt be more the effect of feeling than of any thing elſe. Where the injury is of a perſonal nature; where the comfort and happineſs of a man are concerned, you have no meaſure by which to form your judgement. You cannot aſcertain a matter of this kind, by pounds, ſhillings, and pence; nor are the abilities of the defendant to regulate the verdict: for if the plaintiff ſhould be intitled to a particular verdict, the incapacity of the defendant to fulfil it, ought not to be conſidered as a reaſon, why it ſhould not be given. But in a caſe, where the defendant is ſubjected to no particular injury, in that caſe, perhaps, ſome conſideration may be thereto had. In a queſtion of this kind coming before me, for the firſt time, what would have been reaſonable to give, might be difficult to ſay. Three thouſand pounds, ſeems to be an effect of the Jury's being taken by ſurprize. If the verdict had been a verdict for a thouſand pounds, it would have been a verdict, which none could have found fault with. Whether the verdict for three thouſand pounds be one of thoſe palpably exceſſive caſes, which would warrant the interference of the Court, I wiſh for ſome days to conſider. And upon a circumſtance thrown out by my Brother Le Blanc, it were well if it were conſidered elſewhere. If my Brothers think with me, *we will take two or three days.*

Mr. Serjeant Adair ſaid, that unfortunately Mr. Hurry was not in town.
Mr. Serjeant Bolton obſerved, that a letter might be ſent in a day.
Lord Loughborough then ſaid—" It is well worth conſideration."

Mr. Hurrry, to whom what thus fell from the Court, was, as ſpeedily as poſſible, communicated, upon receiving information of it, immediately authorized his attorney, Mr. Bell, to ſend Mr. Watſon the following letter:

Mr. JOHN WATSON.

SIR,

Finding by my advices this day from London, that on arguing the motion for a new trial, in the action againſt you, at the ſuit ot Mr. William Hurry, the Court of Common Pleas declared, that my client was intitled to ſubſtantial and very conſiderable damages; and the Court having ſhown an inclination, that the diſpute ſhould be terminated by

by accommodation, I am authorized by Mr. Hurry to tell you, it always was his intention, when there remained no charge of a ſtain upon his reputation, to accept of your excuſes for your conduct, if you were diſpoſed to make any, and not to inſiſt upon the whole of the damages, which the Jury gave him laſt Thetford aſſizes.

Mr. Hurry, deſirous to ſhow his reſpect for the opinion of the Court, and in order to end all legal altercations between you and him, wiſhes to make two propoſals for your choice, viz. either that you pay Mr. Hurry 200l. to be applied to ſuch uſes as he chuſes (not meaning to put one ſhilling into his own pocket), and all his expences, from the indictment to the final determination of the buſineſs; or half the damages fixed by the Jury, with taxed coſts.

Mr. Hurry requeſts your anſwer by to-morrow, ten o'clock.

I am, Sir,

Your very humble ſervant,

JOHN BELL.

Thurſday, Jan. 21, 1787.

To this letter Mr. Watſon, in return, pleaded an abſolute impoſſibility to comply with its contents, on account of his circumſtances; but offered, at the ſame time, to pay Mr. Hurry 1000l. and all his taxed coſts.

This not being accepted, on Saturday the 23d, the matter came on again before the Court of Common Pleas; when a freſh propoſal, which was offered by the friends of Mr. Watſon, viz. that he ſhould pay 1500l. and make an apology to Mr. Hurry, was tranſmitted to the latter; and on Wedneſday the 27th, the following rule was drawn up by order of the Court, and ſerved on Mr. Watſon's attorney.

In the Common Pleas, Trinity Term. 27 Geo. III.

HURRY againſt WATSON.

Gentlemen, one, &c. Wedneſday the 27th of June. Upon hearing of counſel on both ſides, and by their conſent, it is ordered, that the defendant ſhall pay to the plaintiff, or his attorney, the ſum of fifteen hundred pounds, for the plaintiff's damages and coſts in this action, within two months next enſuing. And that the defendant do, and ſhall, make ſuch an apology to the plaintiff, for his conduct, as Mr. Serjeant Kerby ſhall think proper to direct; the ſame being hereby referred to him, by the

the conſent of both the parties. And it is further ordered, that upon the defendant's paying to the plaintiff the ſaid ſum, within the time aforeſaid; and upon the defendant's making ſuch apology to the plaintiff, as aforeſaid, the verdict found for the plaintiff, at the laſt aſſizes held for the county of Norfolk, ſhall be vacated. But that the Poſtea do, in the mean time, remain in the hands of the Aſſociate, as a ſecurity to the plaintiff for the damages found by the Jury, and for the plaintiff's coſts to be taxed by one of the Prothonotaries of this Court: and it is further ordered, that in default of the defendant's paying to the plaintiff the ſaid ſum, within the time aforeſaid, and making ſuch apology to the plaintiff as aforeſaid, the aforeſaid Poſtea ſhall be delivered to the plaintiff, his attorney, or agent, with liberty for him to proceed to judgement and execution thereon.

By the Court,

FOTHERGIL.

On a Motion of Serjeants Adair, Bond, and Laurence, for the plaintiff.
Serjeants Bolton, Rook, & Le Blanc, for the defendant.

Entered.